

IN THE HIGH COURT OF UTTARAKHAND AT NAINIAL

Writ Petition No. 1360 of 2005 (M/B)

Daljeet Singh Maan,
S/o Sardar Major Singh Maan,
R/o Maan Goods Transport Company,
Rishikesh Road, Railwala,
Dehradun. Petitioner.

Versus

1. State of Uttaranchal,
through Secretary,
Forest Department, Civil Secretariat,
Uttaranchal, Dehradun.
2. Uttaranchal Forest Development Corporation,
Dehradun through its Managing Director,
3. Divisional Marketing Manager,
Uttaranchal Forest Development Corporation,
Dehradun. Respondents

Mr. Alok Singh, Senior Advocate assisted by Mr. Ram Ji Srivastava, Advocate
for the petitioner.

Mr. A. Chatterji, Advocate for respondent Nos. 2 and 3.

JUDGMENT

**Coram: Hon. Rajeev Gupat, C.J.
Hon. P.C. Verma, J.**

P.C. VEERMA, J. (Oral)

1. By means of this writ petition, the petitioner has prayed for a writ of certiorari to quash the impugned order (Annexure 1), which provides the conditions for transportation of sold fuel-wood in terms of the Government Order dated 02.03.2005.

2. The Government Order dated 02.03.2005 is not under challenge in this writ petition. Only the conditions contained in the said Government Order are being challenged. It is stated by the petitioner that the respondents are not providing any facility to the vehicle owners and therefore, they cannot impose any levy or tax or alleged registration fee over the petitioner's vehicle and other vehicle owners. Therefore, it is stated by the petitioner that the impugned order passed

by respondent No. 3, asking illegal registration fee and security, is illegal, arbitrary and unjust. It is further stated that neither the Forest Corporation Act nor the Motor Vehicle Act provides for such registration as directed by the respondent authorities by means of the impugned order. It is further stated that Article 265 of the Constitution of India provides that no tax shall be levied or collected except by authority of law and therefore, the respondents authorities have no legal right or authority to impose any levy or tax or alleged registration fee over the petitioner. It is also stated that the order impugned in this writ petition is violative of Article 19 of the Constitution of India. In support of his case, the petitioner has referred the law laid down by the Apex Court in **Kamaljeet Singh and others Vs. Municipal Board, Pilkhwa and others** reported in **(1986) 4 SCC 174** and **Nagar Mahaplika, Varanasi Vs. Durga Das Bhattacharya and others** reported in **AIR 1968 SC 1119**, in which it has been held that in the absence of quid pro quo, the levy is ultra virus. It is stated by the petitioner that in view of the aforesaid decision of the Apex Court, the order impugned in this writ petition cannot be sustained.

3. It is useful to quote the conditions as contained in Annexure 1 impugned order (English version).

“Conditions for transportation of sold fuel wood form depot in compliance of G.O. No....324/10-2-2005-9(8)/2005 NC/662/50 VIP dated 02-03-05 issued by the State of Uttaranchal.

1. Transporters have to do the work of transportation as per the rates prescribed by Uttaranchal Forest Development Corporation, in which no road expenses are included. The road expenses will have to be borne by the Transporters themselves.
2. For transportation, it is necessary to have valid license for transporting upto specified place. It would be the responsibility of the transporters to transmit the goods safely to its destination.
3. Rotation of the registered trucks for transportation will be prescribed and concerning list will be available in the office of the authority. Permission

will be granted by concerned Depot Officer for transportation according to the rotation of the trucks. The payment of the transporting will be made by the concerned seller to the transporter after completion of safe transportation.

4. Forest Development Corporation will have no responsibility for any dispute after departure/exit of the goods from the depot.
5. Transporter will be fully responsible for any damage during transportation of the departmental goods. The recovery of which will be made for the transporter as land revenue.
6. According to prescribed rotation, truck owners should compulsorily get information of previous day's rotation from Depot Officer for next day's rotation. If prescribed numbered vehicle is not available on the prescribed date, the rotation number of concerned vehicle would stand automatically cancelled and next rotation numbered vehicle will transport such goods automatically. Cancelled numbered vehicle will be placed at the end. Registration will be deemed cancelled after repetition of such work thrice.
7. Those sellers who have their own trucks, will be kept separately from the prescribed rotation for their own goods, if they are interested to include themselves in the rotation procedure the Forest Development Corporation will have no objection. The priority would be given to the rotation vehicle after including themselves in the rotation procedure.
8. Departure from the depot will only take place between sun rise to sun set.
9. Prescription of the transport rate in case of transport to other places besides the specified destination would be decided as the rate prescribed for nearest place proportionately by Forest Development Corporation which will be acceptable to the transporters.
10. Payment of the loading-unloading etc. rates of the goods would be borne by the sellers themselves.
11. Departmental Marketing Manger/Depot Officer would be competent to grant permission for transporting of the goods by the vehicle not towards in rotation for less quantity of loading of one truck on the demand of sellers of vehicles.
12. Re-Registration of the trucks for transport will be necessary after completion the effective period from 01-10-05 to 30-09-06. Renewation fees of the registration will be 250.00 per year.

13. Regional Manager (Tehri Region), Uttarakhand Forest Development Corporation, Dehradun will be the arbitrator on arising of any dispute for aforesaid transport work the decision of which would be acceptable to all.
14. If the truck owner intends to register his vehicle for more than the prescribed period of one year, the registration fee will be of Rs. 1000.00 for each year and after one year it will be renewed by him on depositing of prescribed fee for Rs. 250.00 from the office.

(S.K. Chaturvedi)
Departmental Marketing Manager
Uttarakhand Forest Development Corporation
Dehradun.”

4. A perusal of the aforesaid conditions, itself, shows that these conditions have been issued in compliance of the Government Order dated 02.03.2005 which is not under challenge and all these conditions are regulatory in nature. It is not disputed that Forest Corporation has the authority to regulate such purchase and transport of the fuel-wood. Therefore, the Uttarakhand Forest Corporation is competent to allow only those vehicles which are having license from the Corporation for the transportation. It is one way to regulate the transport of fuel-wood. It is needless to say that in the garb of fuel-wood, there may be other wood transported by way of malpractice. Therefore, it is also in the public interest to regulate the same. It is not a tax or fee in the sense in which the petitioner has challenged. It is not a fee to provide some service and it is also not a tax. It is simply a license fee to regulate the fuel-wood transportation. Since it is not a tax, therefore, it is not hit by Article 265 of the Constitution of India. Hence, the facts of the cases in **Kamaljeet Singh and others Vs. Municipal Board, Pilkhwa and others** and **Nagar Mahapalika, Varanasi Vs. Durga Das Bhattacharya and others** (supra) are entirely different from the facts of the present case and hence, the ratio of the above judgments is not attracted. There is no foundation in the writ petition that the conditions contained in Annexure 1 are

violative of Article 19 of the Constitution of India, to our satisfaction.
Thus, the grounds taken in the writ petition are not tenable under law.

5. Hence, the writ petition is devoid of merit and is, hereby,
dismissed.

(P.C. Verma, J.)
14.02.2006

(Rajeev Gupta, C.J.)
14.02.2006

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